

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In Re )  
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Amendment of Part 74 of the )  
Commission's Rules With )  
Regard to the Instructional )  
Television Fixed Service )

MM Docket No. 93-24

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

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COMMENTS OF  
NORTH AMERICAN CATHOLIC EDUCATIONAL  
PROGRAMMING FOUNDATION, INC.;  
NETWORK FOR INSTRUCTIONAL TV, INC.; AND  
SHEKINAH NETWORK

In response to the Commission's Order and Further Notice of Proposed Rulemaking in MM Docket No. 93-24, FCC 94-148, released July 6, 1994 (the "Notice"), North American Catholic Educational Programming Foundation, Inc., Network for Instructional TV, Inc., and Shekinah Network ("the Nationals") hereby submit their Comments in the above-captioned proceeding.

The Nationals are non-profit organizations whose purposes are educational and include providing educational and instructional material via Instructional Television Fixed Service ("ITFS") Systems to accredited educational institutions and governmental organizations. The Nationals collectively hold 61 ITFS licenses throughout the country and are applicants for 24 more ITFS systems providing a critically-needed service to students and faculty nationwide. Most private, parochial and public schools cannot afford the fees charged by commercial entities for access to satellite-delivered distance learning materials. The Nationals fulfill these needs, often at lower rates and, at times, for no

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charge. The Nationals can do this only because of the economies of scale they bring to education. The FCC's rules should be modified, as set forth below, to further the efforts of the Nationals to bring instructional television services to local educators that would in all likelihood not otherwise enjoy these benefits.

**I. Proof of Ability to Construct.**

ITFS applicants are only required to certify that they are financially qualified to construct and operate their facilities for three months. In its zeal to deter speculation and speed application processing, the Commission is considering adoption of new rules requiring detailed disclosure of applicants' financial ability to construct and operate their facilities. Notice at 6, para. 14. The Commission properly notes, however, that such a requirement brings with it the potential for abuse by those filing frivolous petitions and further, the likely unintended consequence that application processing will actually be slowed. Id. at p.7, para. 15.

The Nationals believe some changes to the rules are necessary to help ensure that the ITFS applicant pool is comprised of only financially qualified, sincere applicants. In this regard, the Commission need not modify in any way the underlying financial criteria. It should, however, require wireless cable operators that sponsor ITFS applicants to separately certify in the application that they (or the sources of funding upon which they rely) have net liquid assets sufficient to meet the costs of construction and operation underlying the applicant's

certification. The rules should be revised to require ITFS applicants to have before them documentation from the wireless cable operator establishing its financial qualifications, including a written budget for construction and operation of the ITFS stations, much as broadcast applicants are required to do. See Certification of Financial Qualification by Broadcast Applicants, 2 FCC Rcd 2122 (1987). Moreover, if the wireless cable operator has made commitments to other ITFS applicants, it should also be required to certify that it can meet all such commitments. See George Edward Gunter, 60 RR2d, 1662, 1664 (1986).

The Nationals believe it is critically important that the Commission also establish a means to enforce the veracity of these certifications. This can be accomplished by employing a series of random checks and by disqualifying applicants found to have improperly certified their financial qualifications. In such cases, the Commission should also take appropriate action against the wireless cable operator.

## **II. Expedited Processing Serves Valid Public Interest Objectives.**

Expedited processing of applications should be handled on a case-by-case basis. The FCC's staff could review such requests on a monthly basis and grant such requests where it is satisfied that expedited service is necessary to meet a demonstrable educational need or where other public interest benefits, such as the establishment of a cable-competitive system, will result. However, once the staff is satisfied that the primary purpose of ITFS will be promptly furthered (i.e., the provision of formal educational

programming), expedited processing should proceed regardless of any other factors. In order to minimize the potential disruption of the orderly processing of other worthy application proposals, Commission staff could establish a team of one engineer and one lawyer to handle only the processing of such expedited action requests.

**III. Expansion Of The Wireless Cable Protected Service Area And Protection For All Receive Sites Capable Of Service Should Be Adopted.**

The practical experience of the Nationals clearly establishes that reliable service beyond the 15-mile protected service area ("PSA") is readily achievable. Indeed, service to receive sites located over 50 miles from the transmit site may be possible, depending on such factors as the height, power, and terrain where the station is located. Any formula established for expanding the PSA should thus be flexible enough to take into account the technical configuration of the station.

Enlarging the PSA and extending such protections to ITFS operators would further the goals of the Nationals to extend their services to as many schools as possible. This would also result in the more efficient use of the spectrum by affording educators access to instructional programming from the Nationals that would otherwise not be available. Moreover, to the extent that receive sites are capable of being served, but are located outside of the expanded PSA, these sites also should be entitled to interference protection.

Once the expanded PSA is established, it could also be used to determine whether any proposals contravene the four-channel limitation rule. The Nationals urge the Commission to waive the four channel limitation rule for those applicants proposing service in the same area where there are no competing proposals for those channels in order to expand ITFS services to more effectively meet the varied needs of learners throughout the community.

**IV. Conform The Technical Rules Of The ITFS Service With MDS.**

MDS and ITFS channels operate under identical technical parameters. Therefore, it makes sense to conform the rules governing such services to simply processing.

**V. The Commission should not Institute Application Caps for Non-local ITFS Entities.**

One of the proposals before the Commission is to limit the number of applications that may be filed by nonlocal ITFS entities during a filing window. See Notice at p.7, para. 16. Because non-local ITFS entities like the Nationals are instrumental in making ITFS programming available to local schools that otherwise would be without the benefit of distance learning, the Nationals strongly oppose this proposal.

As the Commission itself observes, non-local ITFS applicants establish their eligibility through letters of intended use from local, accredited schools. The vast majority of these schools do not have the financial or organizational resources necessary to apply for or maintain an ITFS license.

To the contrary, national ITFS entities are able, through economies of scale, to provide local, accredited schools -- many of

them small and underfunded -- with distance learning programming that would not otherwise be available to them. This distance learning programming allows these schools to offer coursework in such subjects as foreign languages and computer skills that they otherwise could not.

Because the ITFS rules ensure that non-local ITFS entities serve local, accredited school, there is no basis for the discrimination against non-local filers that would result from the application cap proposal. Any limit on the number of applications that could be filed by non-local ITFS entities would only limit the number of local, accredited schools that could be served with distance learning courses. The Nationals therefore respectfully request that the Commission reject the application cap proposal.

**VI. Not all Receive Locations Must Be Accredited to Be Legitimate.**

The discussion of receive site accreditation in the Notice evidences an alarming unfamiliarity on the part of FCC rule makers with the actual administration of distance learning courses. It is important for the Commission to bear in mind that accreditation applies to coursework, not to locations. Also, there are legitimate reasons why ITFS programming must be transmitted to other locations.

The suggestion in the Notice that accreditation information should be required for all receive sites is misguided. Whether a specific location has been certified by an accrediting body is irrelevant to whether accredited coursework is being administered there. One of the benefits of distance learning technology like

ITFS is that students of accredited institutions can receive their coursework at locations other than the school building itself. This is of great benefit in rural areas and other places where the population is spread over a larger area than school buildings can be.

Because of the fundamental nature of ITFS technology, local educators and the educational organizations that serve them are best suited to properly determine which locations are legitimate receive locations for an ITFS system. The Commission's current rules regarding the purpose and permissible use of the ITFS service are more than adequate to address this concern. See 47 C.F.R. § 74.931(a)(1).

Artificially limiting ITFS receive sites to the school buildings of accredited institutions would rob the ITFS resource of its unique benefit. The proposal to require accreditation of each designated receive site is misguided and should be rejected.

**VII. The Filing Freeze Should Be Lifted, and Filing Windows Should Be Frequent.**

The Nationals applaud the Commission's action in lifting the filing freeze for major modifications to existing ITFS facilities, and look forward to the lifting of the freeze for new applications. The Nationals also support the proposal to adopt a "window filing" approach to ITFS applications. Once the freeze is lifted, however, it is important that filing windows be frequent.

Under the filing freeze, pent-up demand for ITFS frequencies has built to unreasonable levels. Demand for distance learning courses from students and educators has gone unfulfilled. Demand

for excess ITFS capacity from wireless operators positioned to provide competition in the multichannel video programming marketplace has been squelched. The public would be better served by Commission policies that permit the beneficial use of the ITFS spectrum.

The Nationals encourage the Commission to work quickly to eliminate the ITFS backlog and lift the filing freeze. If a window filing system is adopted, the Commission must also ensure that windows are frequent enough to meet demand. The Nationals propose at least quarterly filing windows in order to ensure the beneficial use of the ITFS resource.

### **Conclusion**

The Nationals believe certifications by wireless cable operators of their ability to construct should be included in the ITFS application. A system of affirmative checks must also be adopted to police the certifications. Expansion of the PSA, its extension to ITFS operations and the protection of ITFS receive sites beyond the PSA serve important public interest objectives. The proposal before the Commission to place a cap on the number of applications that could be filed by a nonlocal applicant during a filing window should be rejected. Further, the proposals described in the Notice to limit ITFS receive sites to the school buildings of accredited schools must be rejected. Finally, the filing freeze must be lifted, and filing windows, if adopted, must be frequent.

Respectfully submitted,



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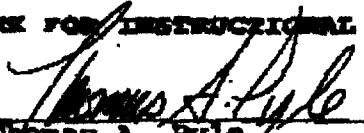
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